

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
BIG STONE GAP DIVISION**

WILLIAM THORPE, *et al.*,

*Plaintiffs,*

v.

VIRGINIA DEPARTMENT OF  
CORRECTIONS, *et al.*,

*Defendants.*

CASE NO. 2:20-cv-00007-JPJ-PMS

**CLASS PLAINTIFFS' MOTION FOR LEAVE TO  
FILE REPLY BRIEF IN SUPPORT OF OBJECTION TO  
MAGISTRATE JUDGE'S REPORT & RECOMMENDATION**

Pursuant to Local Civil Rule 11(c)(1), Class Plaintiffs respectfully seek leave to file a reply brief in support of their Objection (W.D. Va. Sept. 18, 2020), ECF No. 71, to the Magistrate Judge's Report and Recommendation (W.D. Va. Sept. 4, 2020), ECF No. 70. Defendants' Brief in Opposition to Plaintiffs' Rule 72(b) Objection to Magistrate Judge's Report & Recommendation (W.D. Va. Oct. 2, 2020), ECF No. 74, expands on the erroneous conclusions of the Magistrate Judge by mischaracterizing Class Plaintiffs' well-pleaded allegations and misapplying prevailing case law. Class Plaintiffs submit that the proposed 8-page exhibit, attached hereto as Exhibit 1, would be helpful to the Court's consideration.

In support of this Motion, Class Plaintiffs state as follows:

1. Magistrate Judge Sargent issued an 89-page Report and Recommendation ("R&R"), which provided a thoughtful and thorough accounting of Class Plaintiffs' legal claims

and factual allegations. However, Magistrate Judge Sargent erred in recommending the dismissal of Class Plaintiffs' breach-of-contract claims in full.

2. In response, on September 18, 2020, Class Plaintiffs timely filed their Objection in accordance with Federal Rule of Civil Procedure Rule 72(b). On October 2, 2020, Defendants filed a brief in opposition to Plaintiffs' Objection.

3. On October 9, 2020, Defendants filed their Motion for Leave to File Reply Brief in Support of Rule 72(b) Objections to Magistrate Judge's Report & Recommendation (W.D. Va. Oct. 9, 2020), ECF No. 76. Defendants moved for permission to file a reply brief despite conceding that "Rule 72 does not expressly contemplate the filing of reply briefs in support of objections to magistrate judges' reports and recommendations." *Id.* ¶ 4. Moreover, Defendants did not notify Class Plaintiffs of their intention to file a reply brief.

4. On October 12, 2020, this Court granted leave (ECF No. 77), and Defendants filed their reply brief on the docket (ECF No. 78).

5. Following Defendants' motion for leave to file a reply, on October 19, 2020, Class Plaintiffs filed their motion for leave to file a surreply (W.D. Va. Oct. 19, 2020), ECF No. 79. In that motion, Class Plaintiffs indicated that they would separately move for leave to file a reply in support of their Objection. *See id.* at 1 n.1.

6. In their October 20, 2020 Response to Class Plaintiffs' Motion for Leave to File Surreply Brief (W.D. Va. Oct. 20, 2020), ECF No. 80, Defendants "reserve[d] the right to oppose such a motion, given the untimeliness of a reply under Local Civil Rule 11(a)." *Id.* at 1.<sup>1</sup>

7. This Motion is proper for two reasons. First, Class Plaintiffs never intended to prolong the briefing on the R&R beyond that expressly provided for in the Federal Rules—one

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<sup>1</sup> However, Defendants did not oppose Class Plaintiffs' motion to file a surreply brief. *Id.*

brief for objections, and one for a response to those objections. Defendants, however, sought and received leave to file additional briefing with respect to the R&R without providing notice to Class Plaintiffs. Considering the lack of legal foundation for Defendants' reply brief, in either the Federal Rules or the Rules of this Court, and that Defendants did not provide notice to Class Plaintiffs, this Court should reject any opposition to the instant Motion on timeliness grounds. Second, granting Class Plaintiffs leave to file a reply brief clearly is in the interests of justice as the Court granted Defendants such leave.

WHEREFORE, Class Plaintiffs respectfully request that the Court grant their motion for leave to file a surreply brief, and order that their proposed surreply brief, attached hereto as Exhibit 1, be deemed filed.

Dated: October 27, 2020

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 27, 2020, a copy of the foregoing document was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF system.

Dated: October 27, 2020

Respectfully submitted,

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